

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7845 OF 2005

Mt. Ram Labhaya Suri ... Petitioner

V/s

State of Maharashtra & anr. ... Respondents

Mr. A.M. Saraogi for the petitioner.

Mr. S.V. Borkar with S.K. Sthalekar for the respondents.

CORAM: S.U. KAMDAR, J.

DATED: 22ND NOV., 2005

P.C.:

1. In the light of the contentions raised by the petitioner that the present suit is not maintainable under Order 23 Rule 3-A and a remedy of the respondent is to apply for the identical relief in an application in the execution proceeding, the learned counsel for the petitioner states that he will adopt the appropriate proceeding in execution for the purpose of seeking the same relief as has been done in the present suit. It is clarified that the respondents will be entitled to take out appropriate application in the execution proceeding by filing execution application.

2. In the light of the aforesaid contention, the impugned order dated 1.10.2005 is set aside. The learned counsel for the respondents seeks leave to withdraw the Short Cause Suit No. 4363 of 2003. The suit is dismissed as withdrawn with liberty to take out appropriate execution application on the same cause of action and further liberty to adopt appropriate proceedings in execution under Sec. 47 of the Civil Procedure Code. In an event if such an application is made, it will be tried on merits and will not be dismissed on the ground of maintainability by the Trial Court in the light of the statement made by the learned counsel for the petitioner herein. Petition is disposed of accordingly.

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